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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Question of the death penalty*

Report of the Secretary-General

Summary

Pursuant to Human Rights Council decision 18/117, the present report is submitted to update previous reports on the question of the death penalty. In his report the Secretary-General confirms that the trend towards the universal abolition of the death penalty is continuing. During the reporting period, initiatives limiting the use of the death penalty and implementing the safeguards guaranteeing protection of the rights of those facing the death penalty were also recorded in several States. A minority of States continued to use the death penalty, in contravention of international human rights law. As requested by the Council in its resolution 22/11, the report also includes information on the human rights of children of parents sentenced to the death penalty or executed.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. Pursuant to Human Rights Council decision 18/117, the present report is submitted to update previous reports on the question of the death penalty, including the most recent quinquennial report of the Secretary-General (E/2015/49 and Corr.1). Pursuant to Council resolution 22/11, the report also includes information on the human rights of children of parents sentenced to the death penalty or executed.

2. The report covers the period from July 2016 to June 2018. It is based notably on a cali for inputs circulated on 29 January 2018 to States, national human rights institutions, United Nations agencies, international and regional intergovernmental bodies and non-governmental organizations.[1] Attention is also drawn to the report of the Secretary-General to the General Assembly on a moratorium on the use of the death penalty (A/73/260), in which he outlined efforts made towards the implementation of Assembly resolution 71/187.

II. Changes in law and practice

3. Changes in law include new legislation abolishing or reinstating the death penalty, restricting it or expanding its scope, as well as ratification of international human rights treaties that provide for the abolition of the death penalty. Changes in practice comprise non-legislative measures, including executive and judicial measures.

A. Abolition of the death penalty or initiatives taken for its abolition, including commitments provided to abolish it

4. Some 170 States have abolished or introduced a moratorium on the death penalty either in law or in practice, or have suspended executions for more than 10 years. During the reporting period, criminal codes which do not provide for the death penalty were adopted or came into force in Benin,[2] Burkina Faso[3] and Mongolia.[4] In the Central African Republic[5] and Guinea,[6] military justice codes which do not provide for the death penalty were adopted or came into force. The National Assembly of Chad promulgated a penal code which abolishes the death penalty for ordinary crimes, while maintaining it for "terrorism".[7] In October 2017, the Guatemala Constitutional Court effectively abolished the death penalty for ordinary crimes.[8] Madagascar and Sao Tome and Principe ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the Dominican Republic, Togo and the State of Palestine acceded to it and the Gambia signed it.[9] In the United States of America, the Delaware Supreme Court ruled that the capital sentencing statute in that state was unconstitutional, and therefore abolished the death penalty.[10]

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[1] Submissions are available for consultation from the Secretariat.

[2] Law 2018-15.

[3] See www.assembleenationale.bf/.

[4] Criminal Code, in force 1 July 2017.

[5] Military Justice Code, adopted March 2017.

[6] Military Justice Code, in force 28 December 2017.

[7] Law No. 2017-01, 8 May 2017.

[8] Decision 5986-2016, 24 October 2017.

[9] See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&clang=_en; and S/2018/614, para 52. The President of the Gambia also announced a moratorium on the use of the death penalty in February 2018 "as a first step towards abolition". See https://statehouse.gov.gm/statement-53rd-independence-anniversary-celebration.

[10] *Rauf v. State of Delaware*, No. 39, 2016. The decision applies retroactively (*Powell v. State of Delaware*, No. 310, 2016).

5. Various processes to abolish the use of the death penalty were initiated in several States. In Benin and Burkina Faso, amendments to the constitution were submitted to the National Assembly which would abolish the death penalty.[11] The Guatemala Congress considered a bill to abolish the death penalty.[12] The African Court on Human and Peoples' Rights is also currently considering the merits of a challenge to the consistency of a mandatory penalty scheme with regional and international human rights standards.[13]

6. Further, States made numerous recommendations during the universal periodic review to States that retain the death penalty.[14] These included recommendations to ratify the Second Optional Protocol to the Covenant,[15] to establish a moratorium,[16] to continue efforts towards or consider abolition[17] and to abolish the death penalty.[18] Some of the recommendations were "noted",[19] while, as mentioned below, Sri Lanka supported recommendations to consider ratifying the Second Optional Protocol[20] and to consider abolishing the death penalty.[21] Further, by way of example, Bahrain supported recommendations to restrict the use of the death penalty to crimes that met the threshold of "most serious crimes" under international law,[22] and recommendations to continue dialogue at the national level with a view to reaching consensus to abolish the death penalty enjoyed the support of Tunisia.[23]

B. Restrictions on the use and scope of the death penalty or limitations of its use

7. In several de facto abolitionist States, as well as in States that continue to apply the death penalty, some noticeable initiatives restricting its use were recorded during the reporting period. In Afghanistan, the new Penal Code "significantly reduces the number of crimes for which the death penalty applies".[24] A committee was established to review death penalty sentences and to address allegations of egregious human rights violations, in particular, fair trial and due process concerns such as lack of access to legal representation and forced confessions.[25] The committee

[11] Submission by International Federation of Action by Christians for the Abolition of Torture (FIACAT).

[12] Initiative No. 5100.

[13] *Johnson v. Ghana*, application No. 016/2017.

[14] See www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx.

[15] For example, recommendations by Montenegro, Rwanda and Uruguay to South Sudan (see A/HRC/34/13, paras. 129.7–129.8) and to the Syrian Arab Republic (see A/HRC/34/5, para. 109.2); by Montenegro, Rwanda, Turkey and Uruguay to Zimbabwe (see A/HRC/34/8, paras.132.28, 132.47 and 132.49–132.50); by Uruguay to Uganda (see A/HRC/34/10, para. 117.56); and by Australia, Croatia, Montenegro, Namibia and Rwanda to Haiti (see A/HRC/34/14, paras. 117.2–117.6).

[16] For example, recommendations by Portugal to the Syrian Arab Republic (see A/HRC/34/5, para. 109.151); by Australia and Georgia to South Sudan (see A/HRC/34/13, paras. 129.9 and 129.14); by Australia, France, Portugal, Slovenia and Spain to Zimbabwe (see A/HRC/34/8, paras. 132.84–132.88); and by Australia, Italy and Portugal to Uganda (see A/HRC/34/10, paras. 117.29, 117.43 and 117.60).

[17] For example, recommendations by the Holy See to South Sudan (see A/HRC/34/13, para. 128.39); by Ukraine to South Sudan (see A/HRC/34/13, para. 129.15); and by France and Namibia to Uganda (see A/HRC/34/10, paras. 117.11 and 117.34).

[18] For example, recommendations by Belgium and Uruguay to Zimbabwe (see A/HRC/34/8, paras. 132.82–132.83); and by Iceland, Panama, Paraguay and Uruguay to Uganda (see A/HRC/34/10, paras. 117.26, 117.41–117.42 and 117.55).

[19] For example, by Zimbabwe (see A/HRC/34/8/Add.1, paras. 15–16); South Sudan (see A/HRC/34/13/Add.1, para. 7); and Haiti (see A/HRC/34/14, paras. 117.2–117.6).

[20] See A/HRC/37/17.

[21] See A/HRC/37/17, paras. 116.53–116.54.

[22] See A/HRC/36/3/Add.1, para. 35.

[23] See A/HRC/36/5, paras. 125.64–124.67.

[24] See https://unama.unmissions.org.

[25] See CAT/C/AFG/CO/2, para. 33; and UA AFG 1/2017 (https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23154).

has also instructed relevant medical departments to determine the real age of certain prisoners and to re-examine those with mental or intellectual disabilities.[26] In its submission, Kenya highlighted that the Government was committed in its efforts to review the death penalty.[27] In Myanmar, a law repealed provisions which allowed the death penalty for treason, abetting treason and sabotage,[28] and Thailand abolished the mandatory death penalty for selling drugs.[29] Several crimes were removed from the list of capital offences in Viet Nam.[30]

8. In November 2017, the Islamic Republic of Iran amended its anti-drug law, limiting the use of the death penalty and reducing the sentences of those sentenced to death. The judiciary was subsequently instructed to review the cases of those already sentenced to death for drug-related offences.[31] Reportedly, the significant reduction in the number of executions in 2018 can be attributed to the commuting of sentences and a temporary halt in drug-related executions, as the number of executions for murder charges remained nearly the same as in 2017.[32] Also in November 2017, Malaysia introduced some sentencing discretion where persons convicted of transporting drugs are found to have cooperated with law enforcement.[33]

9. In the United States, the State of Alabama abolished the practice of judicial override for future death sentences, which had allowed judges to impose death sentences despite a jury recommendation for life imprisonment.[34] The State of Florida abolished non-unanimous jury recommendations for death sentences.[35] And a trial court in Kentucky issued the first judicial ruling finding that the execution of offenders under 21 amounts to cruel and unusual punishment, in violation of the United States Constitution.[36]

C. International and regional instruments contributing to the abolition of the death penalty

10. The Second Optional Protocol to the International Covenant on Civil and Political Rights had been ratified by 85 States as of 15 June 2018. It remains the key international treaty prohibiting the use of the death penalty. The Second Optional Protocol contains no provisions for denunciation or withdrawal. The United Nations human rights treaty bodies continued to encourage Member States to ratify or accede to the Second Optional Protocol, for example, in their consideration of the periodic reports of Bangladesh, Barbados, Burkina Faso, Cameroon, Côte d'Ivoire, Ghana, Guatemala, Haiti, Jamaica, Jordan, Kazakhstan, Kuwait, Lebanon, Malawi, Mauritius, Morocco, Niger, Nigeria, Pakistan, the Republic of Korea, Sri Lanka, Swaziland and Thailand.[37] Furthermore, Sri Lanka supported recommendations to consider ratifying the Second Optional Protocol during the universal periodic review.[38]

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[26] Submission by Afghanistan Independent Human Rights Commission.

[27] Submission by Kenya.

[28] See www.fidh.org/IMG/pdf/asie682apdmweb.pdf, p. 5.

[29] Narcotic Act (Vol. 6) 2016.

[30] See CCPR/C/VNM/3, para. 67.

[31] See A/HRC/37/24, paras. 10–14; and http://fileserver.idpc.net/library/ECPM-IHR-%20Iran%20report%202017.pdf, containing a translation of the text of the Circular by the Head of the Judiciary on the Implementation of the New Amendment to the Anti-Narcotics Law of 6 January 2018.

[32] See https://iranhr.net/en/articles/3325/.

[33] Submission by Malaysia, referring to the Dangerous Drugs Act (Amendment) 2017 Bill passed by the Upper House on 14 December 2017. See also www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF, p. 11.

[34] Senate Bill 16, signed into law on 11 April 2017.

[35] Senate Bill 280, signed into law on 13 March 2017.

[36] *Kentucky v. Bredhold*, case No. 14-CR-161, ruling of 1 August 2017, p. 11. See also www.americanbar.org/content/dam/aba/images/abanews/mym2018res/111.pdf.

[37] See CCPR/C/BGD/CO/1, para. 24; CRC/C/BRB/CO/2, para. 63 (f); CCPR/C/BFA/CO/1, para. 22 (also CEDAW/C/BFA/CO/7, para. 58); CCPR/C/CMR/CO/5, para. 24; CCPR/C/COD/CO/4, para. 24;

11. Given the irreversible nature of the death penalty, death sentences should not be carried out as long as international interim measures requiring a stay of execution are in place. The Human Rights Committee noted, in paragraph 19 of general comment No. 33 (2009) on the obligations of States parties under the Optional Protocol, that, for countries that are party to the first Optional Protocol, a failure to implement interim or provisional measures is incompatible with the obligation to respect in good faith the procedure of individual communication established under the Optional Protocol. In May 2017, the International Court of Justice indicated to Pakistan that it must "take all measures at its disposal" to ensure that an Indian national was not executed pending a final judgment in a dispute concerning alleged violations of article 36 of the Vienna Convention on Consular Relations.[39] The Court has held its provisional measures to be legally binding.[40] Similarly, the Committee against Torture recalled that non-compliance with interim measures of protection regarding deportations constituted a breach of article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[41] and noted that a number of individuals had been executed in Belarus pending proceedings before the Human Rights Committee.[42] A dual national of the United States and Hungary was executed in the United States in July 2017 despite precautionary measures handed down by the Inter-American Commission on Human Rights.[43]

D. Reintroduction of the use of the death penalty, extension of its scope or resumption of executions

12. During the reporting period, State officials in Mongolia,[44] the Philippines[45] and Turkey[46] announced that they were considering reintroducing the death penalty. The United Nations High Commissioner for Human Rights, the Human Rights Committee and special procedure mandate holders expressed their concern at those pronouncements, highlighting that such plans, should they be implemented in the Philippines, would constitute a violation of the country's obligations as a State party to the Second Optional Protocol.[47] During the universal periodic

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CCPR/C/GHA/CO/1, para. 20; CRPD/C/GTM/CO/1, para. 8; CRC/C/HTI/CO/2-3, para. 74; CCPR/C/JAM/CO/4, para. 36; CCPR/C/JOR/CO/5, para. 15; CCPR/C/KAZ/CO/2, para. 16; CCPR/C/KWT/CO/3, para. 23; CCPR/C/LBN/CO/3, para. 22; CRC/C/MWI/CO/3-5, para. 45 (d); CCPR/C/MUS/CO/5, para. 18; CCPR/C/MAR/CO/6, para. 20; CEDAW/C/NER/CO/3-4, para. 49; CEDAW/C/NGA/CO/7-8, para. 52 (also CMW/C/NGA/CO/1, para. 14); CCPR/C/PAK/CO/1, para. 18; CAT/C/KOR/CO/3-5, para. 30; CERD/C/LKA/CO/10-17, para. 31; CCPR/C/SWZ/CO/1, para. 31; and CCPR/C/THA/CO/2, para. 18.

[38] See A/HRC/37/17.

[39] *Jadhav Case (India v. Pakistan)*, press release No. 2017/22, 18 May 2017.

[40] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Provisional measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 325.

[41] General comment No. 4 (2017) on the implementation of article 3 in the context of article 22.

[42] See CAT/C/BLR/CO/5, para. 55.

[43] See www.oas.org/es/cidh/decisiones/pdf/2017/9-17MC156-17-US.pdf.

[44] See https://president.mn/en/2018/04/02/president-battulga-to-present-to-parliament-draft-bill-on-reinstating-capital-punishment-for-child-sexual-abuse-offenses/; and https://president.mn/en/2018/04/05/president-battulga-gives-speech-at-opening-of-parliaments-spring-session/.

[45] See www.penalreform.org/wp-content/uploads/2018/04/PRI_Global-Prison-Trends-2018_EN_WEB.pdf, p. 13.

[46] See www.trtworld.com/turkey/turkey-will-reinstate-death-penalty-soon-erdogan-217431.

[47] See www.ohchr.org/Documents/Countries/PH/OpenLetterHC_DeathPenalty.pdf; www.ohchr.org/Documents/HRBodies/CCPR/NV_from_HRC_ThePhilippines_28March2017.pdf; https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22903; and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21388&LangID=E.

review in July 2017, several Member States also recommended that the Philippines refrain from reinstituting the death penalty.[48]

13. During the reporting period several States adopted laws providing for the death penalty: India for hijacking,[49] Nigeria for kidnapping,[50] Singapore for nuclear terrorism[51] and Thailand for corruption.[52] In the Islamic Republic of Iran, amendments to the Law for Combating Drugs transformed some non-capital crimes into capital offences.[53] In May 2018, Mauritania adopted amendments which impose the mandatory death penalty for "apostasy" and "blasphemy".[54] In the United Arab Emirates, a new law expanded the scope of the death penalty, including for threats to the State's internal security.[55]

14. Egypt and India expanded the scope of the death penalty for violence against children. In Egypt, amendments to the Penal Code in January 2018 provide for the death penalty for the crime of child abduction when linked to an assault or rape.[56] In April 2018, the Indian Government passed an executive ordinance allowing the death penalty for the rape of children younger than 12 years.[57]

15. A number of States resumed or sought to resume executions during the reporting period. In 2016, Botswana[58] and Nigeria[59] carried out their first executions since 2013. In January 2017, three men were executed in Bahrain, the first executions since 2010; one of the men was under 18 at the time of the alleged crime.[60] Kuwait carried out the first executions in four years, hanging seven people in one day.[61] In March 2017, Jordan carried out a group execution of 15 people.[62] The United Arab Emirates carried out one execution in 2017, the first since 2015,[63] and Thailand carried out its first execution in nine years in June 2018.[64]

III. Information on the use of the death penalty

16. In October 2017, the Secretary-General recalled that transparency was a prerequisite to assess whether the death penalty was being carried out in compliance with international human rights standards. He highlighted cases where limits were placed on the information that could be shared with defence lawyers, limiting their ability to appeal for clemency, and cases where anonymity was granted to companies, shielding them from potential advocacy against the use of their products in executions. The Secretary-General concluded that lack of transparency showed "a lack of respect for the human rights of those sentenced to death and to their families". He also noted that it damaged the administration of justice more generally and that access to full

[48] See A/HRC/36/12.
[49] Anti-Hijacking Act 2016.
[50] Reportedly in Benue, Bauchi and Lagos States. See www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF, p. 37.
[51] Terrorism (Suppression of Misuse of Radioactive Material) Act.
[52] Anti-Corruption Law 2017.
[53] Submission by Abdorrahman Boroumand Center-Human Rights and Democracy for Iran.
[54] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23186&LangID=E.
[55] Decree Law No. 7(2016), 18 September 2016.
[56] Law No. 5 of 2018.
[57] Criminal Law (Amendment) Ordinance, 2018.
[58] See www.achpr.org/files/sessions/59th/inter-act-reps/267/59os_inter_session_dp_comm_kayitesi_eng.pdf, para. 15.
[59] See www.amnesty.org/download/Documents/ACT5057402017ENGLISH.PDF.
[60] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21092&LangID=E; and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21118&LangID=E.
[61] See www.kuna.net.kw/.
[62] See www.petra.gov.jo.
[63] See www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF.
[64] See http://bangkok.ohchr.org/news/press/Thaiexecution.aspx.

and accurate data was vital to policymakers, civil society and the general public. He concluded that secrecy around executions undermined the debate around the death penalty and obstructed efforts to safeguard the right to life.[65]

17. It is difficult to obtain up-to-date and accurate global figures on the application of the death penalty. Belarus, China and Viet Nam continue to classify data on the use of the death penalty as a State secret.[66] Information regarding the date of executions is reportedly withheld from family members and lawyers of death row prisoners, notably in Belarus[67] and Japan.[68] Obtaining data in countries affected by conflict is a further challenge. The Office of the United Nations High Commissioner for Human Rights (OHCHR) continued to express concern that despite regular requests for information on the use of the death penalty in Iraq, information was not available.[69]

IV. Safeguards guaranteeing the protection of the rights of those facing the death penalty

18. The Human Rights Committee continued its consideration of a draft general comment on article 6 of the International Covenant on Civil and Political Rights,[70] addressing notably the meaning of "most serious crimes", the prohibition on mandatory death sentences, methods of execution, deportation and extradition, fair trial guarantees, the right to consular notification, and protection of juveniles, persons with disabilities and pregnant women.[71] In resolution 36/17, the Human Rights Council reaffirmed the safeguards guaranteeing the protection of persons facing the death penalty, which are the internationally recognized minimum standards to be observed by States that continue to impose capital punishment.[72]

A. Restriction of the use of the death penalty to the "most serious crimes"

19. According to article 6 of the Covenant, States parties that have not yet abolished the death penalty should only impose it for the "most serious crimes", which has been consistently interpreted as meaning intentional killing.[73]

20. During the reporting period, the death sentence was reportedly imposed for offences that did not meet the threshold of "most serious crimes", including drug-related offences,[74] spying,[75]

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[65] See www.un.org/sg/en/content/sg/statement/2017-10-10/secretary-generals-remarks-panel-%E2%80%9Ctransparency-and-death-penalty%E2%80%9D.

[66] See www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF, p. 4; www.amnesty.org/download/Documents/ASA1758492017ENGLISH.PDF; and www.hri.global/files/2018/03/06/HRI-Death-Penalty-Report-2018.pdf, pp. 25 and 29.

[67] See CAT/C/BLR/CO/5, para. 55. See also A/HRC/38/51, para. 78: "The secrecy surrounding executions, and the fact that no details of executions or of places of burial are given to the families also amount to torture."

[68] See CCPR/C/JPN/CO/6, para. 13; and CCPR/C/JPN/CO/5, para. 16.

[69] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22166&LangID=E.

[70] See www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx.

[71] No countries appear to allow the execution of pregnant women, and there are no reports of any such executions in modern times (see E/2015/49, para. 80). State submissions highlighted additional provisions in place with regard to women (e.g., Kazakhstan and Morocco).

[72] Economic and Social Council resolution 1984/50; see also E/2015/49, para. 60.

[73] See CCPR/C/LBN/CO/3, para. 22; CCPR/C/48/D/470/1991; and A/67/275, para. 66.

[74] See A/73/260 and A/HRC/39/39.

[75] For example, Saudi Arabia (www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22829&LangID=E).

economic crimes such as corruption[76] and bribery,[77] digging at ancient cultural sites and reselling cultural relics,[78] smuggling or the adulteration of food,[79] kidnapping,[80] apostasy and crimes of blasphemy.[81]

21. In August 2016, special procedure mandate holders condemned charges that carried the death penalty brought against human rights activists in the Sudan which "appear to be directly linked to their work in the defence of human rights, while exercising their rights to freedom of expression and freedom of association".[82]

22. Several States, including Bangladesh, the Islamic Republic of Iran and Iraq, also used the death penalty for terrorism-related crimes. The Human Rights Committee recommended that Bangladesh ensure that the death penalty was not imposed for offences, such as the financing of terrorism, which did not constitute the "most serious crimes".[83] In 2016, the High Commissioner denounced mass executions in the Islamic Republic of Iran for purported terrorism-related offences, stating that the "application of overly broad and vague criminal charges, coupled with a disdain for the rights of the accused to due process and a fair trial have in these cases led to a grave injustice".[84] The Special Rapporteur on extrajudicial, summary or arbitrary executions noted that in Iraq, the Anti-Terrorism Law was overly broad and the "list of crimes for which the death penalty is mandatory includes acts whose gravity falls below the threshold of 'most serious crimes' necessary to impose such a sentence under international norms".[85] The Special Rapporteur also noted that some countries had defined terrorist offences very broadly and included non-violent acts or acts that would not constitute the "most serious crimes" punishable by death.[86] On the 2016 World Day Against the Death Penalty, special procedure mandate holders reminded States that "the imposition of the death penalty is an ineffective deterrent for terrorism, and most times it is also an unlawful one".[87]

23. Consensual same-sex conduct is punishable by death in the Islamic Republic of Iran, Mauritania, Saudi Arabia, the Sudan and Yemen, and parts of Nigeria and Somalia.[88] The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity stated that the "imposition of the death penalty for offences related to homosexuality violates the right to life" as it they do not meet the threshold of "most serious crimes".[89]

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[76] For example, China (www.amnesty.org/download/Documents/ACT5079552018 ENGLISH.PDF, p. 10); Viet Nam (see CCPR/C/VNM/3, para. 67); and Thailand (see CCPR/C/THA/CO/2, para. 17).

[77] For example, Thailand (see CCPR/C/THA/CO/2, para. 17).

[78] For example, China (www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF, p. 10).

[79] For example, Bangladesh (see CCPR/C/BGD/CO/1, para. 23).

[80] For example, Iraq (www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF, p. 10).

[81] For example, Pakistan (see CCPR/C/PAK/CO/1, para. 17 and CRC/C/PAK/CO/5, para. 30, and submission from Justice Project Pakistan.

[82] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20435&LangID=E; and UA SDN 6/2016 (https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3326).

[83] See CCPR/C/BGD/CO/1, para. 10.

[84] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20344&LangID=E; and A/HRC/34/40, para. 11.

[85] See A/HRC/38/44/Add.1, para. 47.

[86] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20800&LangID=E.

[87] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20659&.

[88] See A/HRC/38/43, para. 51.

[89] See A/72/172, para. 32.

B. Prohibition of the mandatory use of the death penalty

24. According to United Nations human rights mechanisms, the mandatory use of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6 (1) of the Covenant, in circumstances where it is imposed without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence.[90] Mandatory death sentences do not permit distinctions to be made between degrees of seriousness and individual circumstances of the particular crime for which the penalty is imposed and, hence, are not compatible with the limitation of capital punishment to the "most serious crimes".[91]

25. During the reporting period, mandatory death sentences reportedly continued to be imposed in Brunei, Ghana, the Islamic Republic of Iran, Malaysia, Maldives, Myanmar, Nigeria, Pakistan, Saudi Arabia, Singapore and Trinidad and Tobago,[92] with some positive trends seen in the Islamic Republic of Iran and Malaysia where the mandatory requirements were removed for certain crimes.[93]

26. In December 2017, the Kenya Supreme Court declared the mandatory nature of the death penalty for murder unconstitutional and tasked relevant authorities to set up a framework to deal with sentence rehearing cases.[94] Furthermore, the Kenya Attorney-General set up a task force to implement this judgment which will consider and prepare proposals based upon comparative studies with other jurisdictions and consult with all key stakeholders, including the Kenya National Commission on Human Rights, religious leaders, relevant parliamentary committees and civil society organizations.[95] The Kenya Law Reform Commission has also recommended that the death penalty be repealed in its entirety.[96] Zambia announced that it was working on ways to amend the Penal Code "so that the death penalty could be handed down at the discretion of judges, rather than being mandatory".[97] In June 2018, the Caribbean Court of Justice struck down the mandatory death penalty for murder in Barbados on the grounds that it breached the right to protection of the law by depriving a court the opportunity to exercise the judicial function of tailoring the punishment to fit the crime.[98]

27. In Uganda, while the mandatory death penalty was declared unconstitutional in 2009[99] — the court deeming that the mandatory nature of the sentence undermined the right to fair trial — the majority of prisoners convicted prior to the repeal of the mandatory sentence are reportedly still waiting for mitigation hearings. In its submission, the Uganda Human Rights Commission called for this situation to be addressed urgently through reinforcement of dedicated legal aid, systematic screening of the cases and a coherent strategy for addressing the outcomes of the mitigations.

28. During the reporting period, Antigua and Barbuda resentenced all those who had been subject to mandatory death sentences.[100] The Eastern Caribbean Supreme Court imposed fixed-

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[90] See E/2015/49, para. 63; A/67/275, para. 67; CCPR/C/GHA/CO/1, paras. 19 – 20; and CCPR/C/98/D/1520/2006, para. 6.3.

[91] See E/2015/49, para. 63.

[92] See www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF, p. 8.

[93] See also paragraph 8 above.

[94] *Francis Karioko Muruatetu & another v. Republic & 5 others* (2017).

[95] Gazette Notice No. 2610, Vol. CXX—No. 37, 23 March 2018.

[96] See www.statelaw.go.ke/wp-content/uploads/2018/03/KLRC-Opinion-on-Death-Penalty-and-Life-Imprisonment.pdf.

[97] See A/HRC/37/14, para. 123.

[98] See *Nervais v. The Queen and Severin v. The Queen* (2018); and www.ccj.org/news/ccj-strikes-down-mandatory-death-penalty-in-barbados.

[99] *Kigula & 419 others v. Attorney-General* (Constitutional Petition No. 6 of 2003).

[100] See www.deathpenaltyproject.org/2016/11/23/antigua-prisoner-released-after-20-years-on-death-row/; and www.deathpenaltyproject.org/2016/12/01/antigua-empties-death-row/.

term sentences, resulting in the immediate release of one individual.[101] Since 2015, courts in Malawi have conducted resentencing hearings for prisoners who had received mandatory death sentences prior to the striking down of the mandatory death penalty,[102] and none were resentenced to death.[103] Furthermore, when resentencing prisoners who were children at the time of the offence, the Malawi High Court held that the imposition of the death penalty on such a child is a breach of constitutional rights so grave that the appropriate remedy is immediate release.[104]

C. Fair trial guarantees

29. The imposition of a death sentence upon the conclusion of a trial in which the provisions of article 14 of the Covenant have not been respected constitutes a violation of the right to life.[105] This might involve the use of forced confessions,[106] lack of effective representation during all stages of the criminal proceedings[107] and failure to respect the presumption of innocence.[108]

30. A number of States provided information regarding legal guarantees and safeguards in their respective jurisdictions which are particularly important in death penalty cases.[109] In China, the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security issued "provisions on several issues concerning the strict exclusion of illegally obtained evidence in handling criminal cases".[110] The provisions aim at clarifying criteria for exclusion of illegally obtained evidence in criminal proceedings and grant defence lawyers the possibility of challenging the legality of the evidence. Other developments were aimed at strengthening scrutiny and accountability of actions by law enforcement, judges and prosecutors.[111] The Judicial Committee of the Privy Council struck down a legal provision which excluded death row prisoners in St. Vincent and the Grenadines from applying for an extension of time to have their cases reviewed by a higher court, on the grounds that such a provision was a denial of due process for death row prisoners and unconstitutional.[112]

31. During the reporting period, the High Commissioner and special procedure mandate holders expressed concern over the lack of fair trial in certain death penalty cases in Bangladesh,[113] Egypt,[114] the Islamic Republic of Iran,[115] Iraq,[116] the Sudan,[117] Saudi Arabia[118] and the United States.[119]

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[101] *The Queen v. Cornwall*, case No. 50 of 1995, September 2016.

[102] *Kafantayeni and others v. The Attorney General of Malawi* (2007).

[103] Submissions by Cornell Law School-Reprieve and Death Penalty Project.

[104] Submission from Reprieve, referring to *Republic v. Limbikani Wilson Mtambo* (Sentence Rehearing Cause No. 20 of 2015) (unreported).

[105] See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 59; and CCPR/C/86/D/1044/2002.

[106] See CCPR/C/102/D/1545/2007, para. 6.2.

[107] See CCPR/C/89/D/1043/2002, paras. 7.4 – 7.5.

[108] See CCPR/C/106/D/2120/2011, para. 11.4.

[109] Cuba, Egypt, Iraq, Jordan, Kenya, Malaysia, Morocco and Pakistan.

[110] See http://en.pkulaw.cn/display.aspx?cgid=297059&lib=law.

[111] See www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF, p. 21.

[112] *Lovelace v. The Queen* (2017).

[113] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20403&LangID=E; and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19796&LangID=E.

[114] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22613.

[115] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23208&LangID=E; and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22556&LangID=E.

[116] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22452&LangID=E.

[117] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23101&LangID=E.

32. In 2016, the High Commissioner expressed serious concern at the creation of a committee in Iraq tasked with making recommendations to accelerate implementation of death sentences.[120] Given the current environment in Iraq, he noted that "innocent people have been and may continue to be convicted and executed, resulting in gross, irreversible miscarriages of justice".[121]

D. Right to seek pardon or commutation

33. According to article 6 (4) of the Covenant, States parties are required to allow individuals sentenced to death to seek pardon or commutation and to ensure that amnesties, pardons and commutations can be granted to them, in appropriate circumstances.

34. During the reporting period, several courts clarified the process by which to seek pardon or commutation. The Privy Council held that individuals in St. Vincent and the Grenadines must have an opportunity to make individual representations when their sentences were considered for a pardon or commutation and that they were entitled to a review in which the appropriate substitute sentences could be considered in the light of their individual circumstances.[122] The Trinidad and Tobago Court of Appeal found that the court should impose whichever sentence it found appropriate in the circumstances and that the full range of sentencing options were available in resentencing in every case. It also held that "there is no logical reason why the sentence of life imprisonment should be imposed carte blanche upon every person who has their sentence [of death] commuted. That is inherently arbitrary and potentially disproportionate."[123]

35. Commutations and pardons were granted during the reporting period, including in Antigua and Barbuda and the Bahamas, where the death sentences of the last remaining people on death row were commuted.[124] In October 2016, in Kenya, the President commuted all death sentences (2,747 inmates) to life sentences.[125] In Malaysia, the Pardons Board commuted one death sentence to life imprisonment in January 2017.[126] In February 2017, the President of Sri Lanka commuted the death sentences of 60 prisoners to life in prison.[127] In December 2017, the President of the United Republic of Tanzania reportedly pardoned 61 death row inmates.[128] In February 2018, the President of Benin issued a decree commuting the death sentences of 14 death row prisoners to life imprisonment.[129]

36. Nevertheless, some individuals were denied their rights to seek pardon or commutation, including in the Islamic Republic of Iran and Malaysia. In March 2017, OHCHR condemned executions of inmates carried out in Malaysia despite the pending decision by the Pardons Board on their clemency petition and allegations that their trial had not met international

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[118] UA SAU 1/2018 (https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23639).

[119] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20865&LangID=E.

[120] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20324&LangID=E.

[121] Ibid.

[122] *Lendore & others v. The State* (2017).

[123] Civil Appeal No.177 of 2010, *Boodram v. Attorney-General of Trinidad and Tobago*, 8 March 2018.

[124] See www.amnesty.org/download/Documents/ACT5057402017ENGLISH.PDF, p. 9.

[125] See www.president.go.ke/2016/10/24/death-row-convicts-get-a-reprieve/.

[126] Submission by Death Penalty Project.

[127] Submission by Human Rights Commission of Sri Lanka; see also www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF, p. 26.

[128] See www.humanrights.or.tz/assets/images/upload/files/LHRC%20THRR%202017(2).pdf, p. 26; and www.thecitizen.co.tz/News/Magufuli-grants-presidential-amnesty-to-61-death-row-inmates-/1840340-4221150-x6ea2c/index.html.

[129] Decree N 08/2018/PR/SGG/CM/OJ/ORD.

standards.[130] In July 2017, the Indonesian Ombudsman concluded that the Attorney-General should not have carried out an execution because the person's clemency request was still pending.[131]

37. In Indonesia, the President reportedly continued to refuse clemency applications submitted by anyone charged with drug-related offences[132] but, in a positive step, the Constitutional Court removed a one-year limit for prisoners to exercise their right to file for clemency.[133] With regard to Pakistan, the Human Rights Committee was particularly concerned that "a policy of blanket refusal of clemency applications is allegedly in place and no clemency applications have been granted".[134]

E. Prohibition of public executions

38. In resolution 2005/59, the Commission on Human Rights urged all States that still maintained the death penalty "to ensure that, where capital punishment still occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, and to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately". According to the Human Rights Committee, when the death penalty is applied, "it must be carried out in such a way as to cause the least possible physical and mental suffering".[135] Despite its prohibition in international law, the Islamic Republic of Iran[136] continued to conduct public executions during the reporting period.[137]

V. Use of the death penalty against children and persons with mental or intellectual disabilities

A. Children

39. Pursuant to article 6 of the International Covenant on Civil and Political Rights and article 37 (a) of the Convention on the Rights of the Child, capital punishment cannot be imposed for offences committed by persons under 18. Nevertheless, capital punishment for offences committed by children reportedly remains lawful in some countries, and during the reporting period juvenile offenders were reportedly believed to be on death row in Bangladesh,[138] the Islamic Republic of Iran,[139] Maldives,[140] Pakistan[141] and Saudi Arabia.[142] In

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[130] See http://bangkok.ohchr.org/news/press/Malaybrothers.aspx.

[131] Submission by LBH Masyarakat-Reprieve; see also www.amnesty.org/en/documents/asa21/6861/2017/en/.

[132] Submissions by LBH Masyarakat-Reprieve and Harm Reduction International.

[133] Decision No. 107/PUU-XIII/2015.

[134] See CCPR/C/PAK/CO/1, para. 17.

[135] See Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para 6; A/HRC/24/18, paras. 59 – 61; and A/HRC/30/18, paras. 30 – 32.

[136] See www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF, p. 8.

[137] See A/HRC/37/24, para. 6.

[138] See www.amnesty.org/download/Documents/ACT5083102018ENGLISH.PDF.

[139] See A/HRC/37/68, para. 19; and www.amnesty.org/download/Documents/ACT5083102018ENGLISH.PDF.

[140] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21936&LangID=E.

[141] See www.amnesty.org/download/Documents/ACT5083102018ENGLISH.PDF; and submission by Justice Project Pakistan.

[142] See www.amnesty.org/download/Documents/ACT5083102018ENGLISH.PDF.

March 2017, Kuwait formally abolished the death penalty for all offenders under the age of 18.[143]

40. The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran reported that five juvenile offenders were executed in 2017.[144] During the reporting period, the High Commissioner and special procedure mandate holders called on the Islamic Republic of Iran to refrain from the execution of juvenile offenders and to undertake a special review of the cases of persons on death row for crimes committed when they were under the age of 18.[145]

41. With regard to Afghanistan, in 2016 the Committee against Torture welcomed the fact that a committee had been established to review death penalty sentences and to discuss a plan to declare a moratorium on the death penalty. In the meantime, it called for Afghanistan to immediately end the practice of execution of minors.[146] Also in 2016, the Committee on the Rights of the Child urged Saudi Arabia to ensure that the death sentences of juveniles were commuted in line with international juvenile justice standards and to amend its legislation with a view to unambiguously prohibiting the imposition of the death sentence on children.[147] In 2017, the Committee urged St. Vincent and the Grenadines to amend the Criminal Code to explicitly prohibit the sentencing of persons under 18 years of age to the death penalty.[148]

42. In its submission, Pakistan stated that the death penalty could not be imposed on individuals below the age of 18 and that no individual below the age of 18 had been sentenced to death. Pakistan also reported that the Juvenile Justice System Bill, 2017, which had been passed by the National Assembly and referred to the Senate, "allows for self-determination of age, shifting the onus to prove otherwise on the prosecution".[149] Also in 2017, the Human Rights Committee and the Committee on the Rights of the Child recommended that Pakistan should, as a matter of priority, take all measures necessary to ensure that those charged with a capital offence had access to an effective and independent age determination process in order to ensure that, in cases where there was no proof of age, the child is entitled to a proper investigation to establish his or her age and, in the case of conflicting or inconclusive evidence, has the right to the rule of the benefit of the doubt.[150]

B. Persons with mental or intellectual disabilities

43. In accordance with international human rights law, the death penalty should not be imposed on persons with mental or intellectual disabilities.[151] In March 2017, the Judicial Committee of the Privy Council accepted that the execution of a person in Trinidad and Tobago

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[143] Law No. 111 of 2015 and The Juvenile Law, art. 15 (as amended in March 2017). Submission by Child Rights International Network.

[144] See A/HRC/37/68, para. 19.

[145] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23279&LangID=E; www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23216&LangID=E; www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=22664&LangID=E; www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22587&LangID=E; www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21958&LangID=E; and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22258&LangID=E.

[146] See CAT/C/AFG/CO/2, paras. 33 – 34.

[147] See CRC/C/SAU/CO/3-4, paras. 20 – 21.

[148] See CRC/C/VCT/CO/2-3, paras. 26 – 27.

[149] Submission by Pakistan. However, juvenile offenders sentenced to death before the Juvenile Justice System Ordinance Act came into force in 2000 have reportedly remained on death row. See www.jpp.org.pk.

[150] See CCPR/C/PAK/CO/1, para. 18; and CRC/C/PAK/CO/5, para. 25.

[151] See Economic and Social Council resolutions 1984/50 and 1989/64; CCPR/C/74/D/684/1996; A/67/279, para. 58; and A/HRC/36/26.

with severe mental impairment was a cruel and unusual punishment.[152] It stated that, in the absence of sentencing discretion in murder cases, the presidential power of mercy was a sufficient mechanism to ensure that those with such disabilities were not subjected to the death penalty.[153] In 2017, the United States Supreme Court granted prisoners the assistance of an independent mental health expert[154] and declared the practice in Texas of evaluating intellectual disability unconstitutional.[155] In June 2018, the Kentucky Supreme Court deemed unconstitutional the State's use of a strict IQ cut-off as a prerequisite to finding a defendant intellectually disabled.[156]

44. Nevertheless, persons with mental or intellectual disabilities reportedly were under sentence of death, including in Ghana, the Islamic Republic of Iran, Japan, Maldives, Pakistan, Singapore and the United States.[157] During the reporting period, the Human Rights Committee stated that Pakistan should take all measures necessary to ensure that no one with serious psychosocial or intellectual disabilities was executed or sentenced to death, including by establishing an independent mechanism to review all cases where there was credible evidence that prisoners facing the death penalty had such disabilities.[158] In 2016, special procedure mandate holders recalled that persons with mental disabilities frequently faced the risk of being sentenced to death and executed in breach of international standards, and that "States must do their utmost to address this risk, including by providing accommodation during all phases of legal proceedings, and by granting adequate protection from any form of discrimination against them because of their mental health condition".[159] In July 2017, special procedure mandate holders issued an urgent appeal for the State of Virginia in the United States to halt the planned execution of a man with psychosocial disability.[160]

45. In May 2017, the Committee on the Rights of Persons with Disabilities was concerned that in the Islamic Republic of Iran persons with disabilities, particularly persons with psychosocial or intellectual disabilities, could face a greater risk of the death penalty due to lack of procedural accommodations in criminal proceedings.[161]

VI. Human rights of children of parents sentenced to the death penalty or executed

46. Pursuant to Human Rights Council resolution 22/11, the present report includes information on the human rights of children of parents sentenced to the death penalty or executed. In its resolution 30/5 on the question of the death penalty, the Council acknowledged the rights of children of parents sentenced to death or executed. It called upon States to ensure that children whose parents or parental caregivers were on death row, the inmates themselves, their families and their legal representatives were provided, in advance, with adequate information about a pending execution, its date, time and location, and to allow a last visit or

[152] *Pitman & Hernandez v. The State* (Trinidad and Tobago), 23 March 2017.

[153] Ibid.

[154] *McWilliams v. Dunn* (2017).

[155] *Moore v. Texas* (2017).

[156] *Woodall v. Kentucky*, 14 June 2018.

[157] Submissions by Justice Project Pakistan and The Advocates for Human Rights-Iran Human Rights-Ensemble contre la peine de mort; see also https://deathpenaltyinfo.org/documents/2017YrEnd.pdf; www.amnesty.org/download/Documents/ACT5083102018ENGLISH.PDF; and www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF, p. 8.

[158] See CCPR/C/PAK/CO/1, para. 18.

[159] UA PAK 9/2016 (https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3359); and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20593&LangID=E.

[160] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21841&LangID=E.

[161] See CRPD/C/IRN/CO/1, para. 22.

communication with the convicted person and the return of the body to the family for burial or to inform them of where the body was located, unless that was not in the best interests of the child.

47. In the context of a recent study by the Organization for Security and Cooperation in Europe, the Special Representative of the Secretary-General on Violence against Children stated that while more research was urgently needed on the issue, the evidence available was sufficiently sound and convincing to recognize the urgency of ensuring a protective environment for such children.[162] States should therefore take appropriate steps in that regard so as to prevent discrimination against children and provide them with the services and the recovery and reintegration measures they urgently required.[163]

VII. Conclusions and recommendations

48. **The present report demonstrates that several countries have taken steps towards the abolition of the death penalty. The Secretary-General welcomes all measures undertaken by States towards limiting the application of, or abolishing, the death penalty. These measures constitute progress in the protection of the right to life and are important steps towards the universal abolition of the death penalty, reaffirming the growing trend towards the progressive abolition of this practice. States that continue to impose and implement death sentences should declare and implement a moratorium on executions with a view to abolishing the death penalty. The Secretary-General also remains opposed to the cruel and dehumanizing practice of public executions and calls on the few States that maintain this practice to refrain from it.**

49. **States that have not yet abolished the death penalty may only impose it for the "most serious crimes", which has been consistently interpreted as meaning intentional killing. He recalls that the death penalty must never be imposed as a sanction for specific forms of non-violent conduct such as apostasy, blasphemy, adultery and consensual same-sex relations. States should also refrain from using the death penalty for crimes not involving intentional killing such as drug-related offences or overly broad terrorism-related crimes. States should also ensure that persons with mental or intellectual disabilities are not sentenced to death. Laws and sentencing guidelines must be developed or amended to prohibit the imposition of the death sentence on such persons and their execution.**

50. **International law clearly prohibits the imposition of the death penalty on juvenile offenders. The Secretary-General urges States to review and amend legislation in line with the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, to ensure that legislation clearly prohibits the imposition of the death penalty on a person for a crime committed when he or she was under 18. States should immediately halt executions of juvenile offenders and resentence all juvenile offenders on death row, while ensuring that such individuals do not simply receive life sentences in place of execution.**

51. **States that still use the death penalty should recognize the urgency of ensuring a protective environment for the children of parents sentenced to death or executed, thereby preventing discrimination and stigma, and of providing them with assistance for their recovery and reintegration. States should also take measures to assist children of their nationals who may face the death penalty abroad.**

52. **The implementation of the death penalty without the requisite transparency makes it difficult, if not impossible, to assess whether it is being carried out in compliance with**

[162] See www.osce.org/odihr/343116?download=true, pp. 8 – 9.

[163] Ibid.

international human rights standards. Retentionist States should systematically and publicly provide full and accurate data on death sentences that are carried out. Those data should include information on charges and data disaggregated by gender, age, nationality, ethnic origin and other relevant demographics, on the persons affected. Such data are necessary to ensure compliance with international human rights standards.

53. **The imposition of a death sentence at the conclusion of a trial in which due process and fair trial safeguards have not been respected constitutes a violation of the right to life. Pending abolition, the Secretary-General urges States to ensure that legal guarantees and safeguards are effectively put in place and implemented, in particular with regard to the right to seek pardon and commutation through procedures which offer certain essential guarantees.**

54. **Even for the "most serious crimes", the death penalty should never be mandatory. The Secretary-General welcomes developments which have led to the removal of the mandatory death penalty in many countries and, in particular, the procedures undertaken to resentence those who were subject to a mandatory death penalty. Courts should be provided with the discretion to consider the circumstances of each individual case, including any mitigating factors. States that maintain the mandatory death penalty should abolish it immediately, and a process that takes into account the personal circumstances of the offender and the particular circumstances of the offence, including its specific aggravating or attenuating elements, should be put in place for all those who were mandatorily sentenced to death.**

55. **Countries continuing to implement the death penalty should take heed of the recommendations made by other States during the universal periodic review process and the concluding observations, general comments and jurisprudence of human rights treaty bodies, not only to ensure conformity with international standards but also to work towards universal abolition.**